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IN THE

Supreme Court of the United States

October Term, 1964

No. 224

DETROIT VITAL FOODS, INC.,
Petitioner,

AGAINST

UNITED STATES OF AMERICA,
Respondent.

Petitioner's Reply Brief in Support of Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MILTON A. BASS,
SOLOMON H. FRIEND,
Counsel for Petitioner,
342 Madison Avenue,
New York 17, N. Y.

LODER APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2 0689

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The respondent contends that the petitioner's arguments are founded upon a faulty premise in employing an analogy between the tablets in the instant case and a loaf of bread manufactured from ingredients which were shipped in interstate commerce.

The respondent argues that the tablets in the instant case are distinguishable from the situation which would obtain with respect to such a loaf of bread. The distinction claimed by the respondent is a distinction without a difference.

The respondent first argues that all of the ingredients of the product are themselves drugs. This statement is cor-

rect, but it does not constitute a distinction, since bread is a food product and the ingredients of bread are similarly foods, such as butter, eggs and yeast.

The respondent further argues that jurisdiction is in some manner related to the fact that the petitioner, in its advertising material, referred to the ingredients of the product.

Petitioner respectfully submits that if a bakery shop placed an advertisement in its window stating that its bread was made of the very best grade A eggs, such an advertising statement would most certainly not create jurisdiction, under the Statute, over the loaf of bread.

It appears that both the petitioner and respondent recognize the fact that jurisdiction under the Federal Food, Drug and Cosmetic Act would not obtain over a loaf of bread manufactured within a State from ingredients which were shipped from without the State. Petitioner respectfully submits that the tablets in the instant case stand in the very same position as that of the loaf of bread.

Respectfully submitted,

MILTON A. BASS,
SOLOMON H. FRIEND,
Counsel for Petitioner.